

DEPARTMENT OF THE INTERIOR

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of *Callirhoe scabriuscula* To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines a plant, *Callirhoe scabriuscula* (Texas poppy-mallow), to be an Endangered species under the authority contained in the Endangered Species Act. This plant occurs in Texas and is threatened by taking, trampling and possible sand mining within its habitat. This determination of *Callirhoe scabriuscula* to be an Endangered species implements the protection provided by the Endangered Species Act of 1973, as amended.

DATES: This rule becomes effective on February 12, 1981.

ADDRESSES: Questions concerning this action may be addressed to Director (FWS/OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, (703/235-2771).

SUPPLEMENTARY INFORMATION: *Callirhoe scabriuscula* (Texas poppy-mallow) was first collected by Dr. Sutton Hayes in the late 1800's on the Colorado River of Texas. This member of the mallow family is an erect, simple or basally branched perennial herb which averages 2 to 4 feet in height. The five wine-purple petals form an erect partially open cup about 1½ inches in diameter, with a dark maroon red inside center ring. *Callirhoe scabriuscula* is limited in distribution to a small area of deep sandy soil blown from alluvial deposits along the Colorado River; this soil type is highly susceptible to wind erosion (Wiedenfeld *et al.* 1970). The continued existence of this plant and the fragile habitat in which it occurs are being threatened by taking, sand mining, grazing, and other factors. This rule determines *Callirhoe scabriuscula* to be Endangered and implements the protection provided by the Endangered Species Act of 1973, as amended. The following paragraphs further discuss the actions to date involving this plant, the threats to the plant, and effects of the action.

Background

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Director published a notice in the *Federal Register* (40 FR 27823) of his acceptance of the report of the Smithsonian Institution as a petition within the context of Section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rulemaking in the *Federal Register* (41 FR 24523) to determine approximately 1,700 vascular plant species to be Endangered species pursuant to Section 4 of the Act. This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975, *Federal Register* publication. *Callirhoe scabriuscula* was included in the Smithsonian report, the 1975 notice of review, and the 1976 proposal. General comments on the 1976 proposal were summarized in an April 26, 1978, *Federal Register* publication which also determined 13 plant species to be Endangered or Threatened species (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over two years old be withdrawn. A one year grace period was given to proposals already over two years old. On December 10, 1979, the Service published a notice withdrawing the June 16, 1976, proposal, which expired November 10, 1980, along with four other proposals which had expired. A status report on this species was compiled on October 31, 1979 and then submitted to the Service in late 1979. This report was not received in time to be used before the November 10, 1980, expiration. Observations by Soil Conservation Service (USDA) personnel and Texas botanists in 1980 provided additional sufficient current biological and economic information. Based on this sufficient new information the Service repropose *Callirhoe scabriuscula* (45 FR 41321) on June 18, 1980.

The regulations to protect Endangered and Threatened plant species appear at 50 CFR 17 and establish the prohibitions and a permit procedure to grant exceptions, under certain circumstances to the prohibitions.

The Department has determined that this is not a significant rule and does not

require the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Summary of Comments and Recommendations

In the June 18, 1980, *Federal Register* proposed rule (45 FR 41321) and associated notifications and press releases, all interested parties were requested to submit factual reports or information which might contribute to the development of a final rule. Letters were sent to the Governor of Texas, the Soil Conservation Service (USDA), and local governments notifying them of the proposed rule and soliciting their comments and suggestions. All comments received during the period from June 18, 1980, through September 16, 1980, were considered and these are discussed below.

The Governor of Texas commented on the possible effects and conflicts of listing *Callirhoe scabriuscula* as an Endangered species. The letter stated that no conflicts between protecting *Callirhoe scabriuscula* and the State's wildlife resources exist. The State also commented that the proposed Stacey Reservoir should not impact this plant or its habitat. The State also pointed out that maintaining the highway right-of-ways in this area is a State responsibility and not a Federal one as stated in the proposal. This has been corrected in this final rule. The Service has checked on these points and agrees that no conflicts are expected.

The Texas State Conservationist of the Soil Conservation Service (USDA), commented that the information presented in the June 18, 1980, proposal was consistent with their knowledge of *Callirhoe scabriuscula*. They noted recent farm activity in the area where the *Callirhoe scabriuscula* occurs and also an increased harvest of its seeds.

The Garden Club of America commented that they support the listing of *Callirhoe scabriuscula*. They noted that this conspicuously beautiful plant is one of the most beautiful wild flowers of Texas and cited past decline of the species. The Alamo Heights-Terrell Hills Garden Club and the Garden Club of Houston concur with the listing.

Conclusion

After a thorough review and consideration of all information available, the Director has determined that *Callirhoe scabriuscula* Robins. (Texas poppymallow) is in danger of extinction throughout all or a significant portion of its range due to one or more of the factors described in Section 4(a) of the Act.

These factors and their application to *Callirhoe scabriuscula* are as follows:

1. *Present or threatened destruction, modification, or curtailment of its habitat or range.* Much of the natural habitat of *Callirhoe scabriuscula* has been disturbed. The present range is limited to one Texas county, much of which is no longer suitable habitat for the plant. The actual area covered by the plant is very small. The range is dissected by a four-lane divided highway (Highway 67) and two frontage roads. All of the land on which the plants now occur is in private ownership. Cultivation, establishment of rural residences, and development of roads and a railway have reduced the range and the size of the populations. An imminent threat to all existing populations is commercial sand mining within the plant's habitat (Amos, 1979).
2. *Overutilization for commercial, sporting, scientific or educational purposes.* If exact localities were published, the plant's conspicuous and showy blooms could cause it to be threatened by amateur gardeners, wildflower enthusiasts, and commercial horticultural collecting. Since all the populations occur on privately owned land, taking of these attractive plants could not be prohibited.
3. *Disease or predation* (including grazing). Numbers of individuals in areas under grazing pressure observed during the past three seasons have been steadily declining and there has been a marked reduction in plant vigor. The erect habit and the single main stem of the plant make it particularly susceptible to trampling by grazing animals. Because of the short flowering and fruiting period of the species, the plants which are trampled do not recover in time to produce seeds in that season.
4. *The inadequacy of existing regulatory mechanisms.* The taxon is not protected under any current Texas state law. The Endangered Species Act would offer needed protection for the species.
5. *Other natural or man-made factors affecting its continued existence.* Restriction to a very specialized and localized soil type and total range which is geographically limited to a small area tend to intensify any adverse effects occurring in the habitat of this plant.

Critical Habitat

Section 4(a)(1) of the Endangered Species Act provides in part that: "At the time any such regulation (to determine whether a species is Endangered or Threatened) is proposed, the Secretary shall by regulation, to the

maximum extent prudent, specify any habitat of such species which is then considered to be critical habitat."

Callirhoe scabriuscula is threatened by taking, an activity not prohibited by the Endangered Species Act of 1973 with respect to plants. Publication of Critical Habitat maps would make this species more vulnerable. After recovery and protection plans have been developed for this plant, Critical Habitat may be beneficial and may be proposed in the future. However, it would not be prudent to determine Critical Habitat at this time.

Effects of the Rule

In addition to the effects discussed above, the effects of this rule will include, but will not necessarily be limited to, those mentioned below.

The Act and implementing regulations published in the June 24, 1977, *Federal Register* (42 FR 32373) set forth a series of general prohibitions and exceptions which apply to all Endangered plant species. All of those prohibitions and exceptions also apply to any Threatened species, unless a special rule pertaining to that Threatened species has been published and indicates otherwise. The regulations referred to above, which pertain to Endangered and Threatened plants, are found at Sections 17.61 and 17.71, of 50 CFR and are summarized below.

With respect to *Callirhoe scabriuscula* all prohibitions of Section 9(a)(2) of the Act, as implemented by Section 17.71 would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions would apply to agents of the Service and State conservation agencies. The Act and 50 CFR Section 17.71 also provide for the issuance of permits to carry out prohibited activities involving Endangered and Threatened species under certain circumstances. International and interstate commercial trade in *Callirhoe scabriuscula* does not exist at present. It is anticipated that few permits involving plants of wild origin would ever be issued, since this plant is not common in the wild or in cultivation. Additional paperwork and permits required for the public would be minimal in the case of *Callirhoe scabriuscula*.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species

which is listed as Endangered or Threatened. This protection will now accrue to *Callirhoe scabriuscula*. Provisions for Interagency Cooperation implementing Section 7 are codified at 50 CFR Part 402. These require Federal agencies not only to insure that activities they authorize, fund, or carry out, are not likely to jeopardize the contained existence of *Callirhoe scabriuscula*, but also to insure that their actions are not likely to result in the destruction or adverse modification of any Critical Habitat which may be determined at some future date by the Director.

The known populations of *Callirhoe scabriuscula* occur on privately owned lands. The Soil Conservation Service Field Office in Ballinger, Texas is aware of the significance and location of this plant. No permits are required for sand mining and the SCS has no involvement in this activity. No other Federal involvement is foreseeable at this time.

National Environmental Policy Act

An environmental assessment has been prepared in conjunction with this proposal. It is on file in the Service Office of Endangered Species, 1000 North Glebe Road, Arlington, Virginia, and may be examined during regular business hours, by appointment. This assessment forms the basis for a decision that this is not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Authors

This rule is being published under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1543; 87 Stat. 844). The primary authors of this rule are Ms. E. LaVerne Smith and Mr. Tom Strekal, Washington Office of Endangered Species (703/235-1975).

Literature Cited

- Amos, B. 1979. Determination of *Callirhoe scabriuscula* Robins, as an endangered species. Prepared for U.S. Fish and Wildlife Service. October 31, 1979.
- Gould, F. S. 1975. Texas plants, a checklist and ecological summary. College Station, Texas: Texas A&M University System, The Texas Agricultural Experiment Station.
- Wiedenfeld, C. C., L. J. Barnhill, and C. J. Novosad. 1970. Soil survey of Runnels County, Texas. Washington, D.C.: Soil Conservation Service.

Regulations Promulgation

Accordingly, § 17.12 of Part 17 of chapter I of Title 50 of the U.S. Code of Federal Regulations is amended, as set

forth below.

1. Section 17.12 is amended by adding, in alphabetical order, the following plant:

§ 17.12 Endangered and threatened plants.

Species		Historic range	Status	When listed	Critical habitat	Special rule
Scientific name	Common name					
Malvaceae—Mallow family:						
<i>Callirhoe scabriscula</i>	Texas poppy-mallow	U.S.A. (Texas)	E	NA	NA

Dated: January 2, 1981.

Robert S. Cook,

Acting Director, Fish and Wildlife Service.

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